Supreme Court, U.S.
FILED
JUL 2 1992
OFFICE OF THE CLERK

No. 91-794

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

HENRY HARPER, *et al.*,
Petitioners,

v.

VIRGINIA DEPARTMENT OF TAXATION

On Writ of Certiorari to the Supreme Court of Virginia

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED NOVEMBER 15, 1991
CERTIORARI GRANTED MAY 18, 1992

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COMMONWEALTH OF VIRGINIA

IN THE CIRCUIT COURT
OF THE CITY OF ALEXANDRIA

CL891080

HENRY HARPER, *et al.*

vs.

COMMONWEALTH OF VIRGINIA

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
December 7, 1989	Transfer from Richmond Circuit Court
May 31, 1989	Complaint
June 22, 1989	Motion for Leave to Amend Complaint
June 23, 1989	Order
June 30, 1989	Complaint
July 21, 1989	Answer and Grounds of Defense
October 31, 1989	Plaintiff's Motion for Partial Summary Judgment
October 31, 1989	Declaration of Henry Harper
October 30, 1989	Order
November 17, 1989	Receipt of Transfer and Request for Filing Fee
February 12, 1990	Letter Opinion
	Order: defendant's motion for summary judgment granted and plaintiffs' motion for partial summary judgment denied.

DATE	PROCEEDINGS
March 15, 1990	Notice of Appeal
April 30, 1990	Notice of Filing Transcript
September 11, 1990	Order from Supreme Court: appeal awarded. Appeal bond to be posted.
October 15, 1990	Cost Bond
March 22, 1991	Order from Supreme Court: judgment is affirmed.
March 22, 1991	Opinion by Justice Roscoe B. Stephenson, Jr.
April 26, 1990	TRANSCRIPT OF FEBRUARY 2, 1990 PLAINTIFFS EXHIBIT—NONE DEFENDANTS EXHIBIT—NONE

VIRGINIA:

IN THE SUPREME COURT OF VIRGINIA

Record No. 900770

HENRY HARPER, *et al.*,
Appellants,
against

VIRGINIA DEPARTMENT OF TAXATION,
Appellee.

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
June 11, 1990	Petition for appeal
June 13, 1990	Record from trial court Manuscripts (5 vols.) Transcript (1 vol.) No exhibits No depositions
July 2, 1990	Brief in opposition
September 7, 1990	Order entered
October 17, 1990	Joint appendix (1 vol.)
October 17, 1990	Brief for appellants (1 vol.)
November 9, 1991	Letter from Clerk's Office to counsel
November 13, 1990	Brief of appellee (1 vol.)
November 27, 1990	Appellants' reply brief (1 vol.)
December 6, 1990	Order entered
March 1, 1991	Opinion rendered

DATE	PROCEEDINGS
March 1, 1991	Order entered
July 1, 1991	Letter from the Supreme Court of the United States to the Clerk's Office, dated June 28, 1991
July 9, 1991	Order entered
August 1, 1991	Letter, with attachments, from Supreme Court of the United States to Clerk's Office, dated July 30, 1991
August 1, 1991	Order entered
August 27, 1991	Appellee's brief on remand (1 vol.)
September 6, 1991	Appellants' reply brief on remand (1 vol.)
November 8, 1991	Opinion rendered
November 8, 1991	Order entered
May 21, 1992	Letter with attachment from the Supreme Court of the United States to Clerk's Office, dated May 18, 1992 Order entered
May 21, 1992	Order entered on
June 1, 1992	Letter from Supreme Court of the United States to Clerk's Office, dated May 28, 1992

IN THE CIRCUIT COURT
FOR THE CITY OF ALEXANDRIA

(Title Omitted in Printing)

COMPLAINT

Plaintiff Virginia taxpayers bring this action to obtain refunds of the income taxes they have overpaid during the tax years 1985, 1986, 1987 and 1988, as these taxes were assessed and collected from them in violation of the Constitution and laws of the United States.

PARTIES

1. Plaintiff Henry Harper is a citizen of the United States, a resident of the Commonwealth of Virginia and President of the Virginia Federation of Chapters of the National Association of Retired Federal Employees. He has paid income tax for the years 1985 through 1988 to the Commonwealth of Virginia on his income, including that portion of his income representing his federal civil service annuity for past service to the federal government. He has submitted an amended return for these tax years, representing his income to exclude that portion attributable to his civil service annuity.

2. Plaintiff H.T. Steve Morrissey is a citizen of the United States, a resident of the Commonwealth of Virginia and President of the National Association of Retired Federal Employees. He has paid income tax for the years 1987 and 1988 to the Commonwealth of Virginia on his income, including that portion of his income representing his federal civil service annuity for past service to the federal government. He has submitted an amended return for these tax years, representing his in-

come to exclude that portion attributable to his civil service annuity.

3. Plaintiffs Oscar J. Honeycutt, Rose S. Musumeci, Nancy B. Walsh, Mrs. Gay H. Packett, Ernest F. Kerekes, Yuell Chandler, Ransom L. Porter, Alan T. Spiher, Jr., Robert P. Halpin, Harold E. Krueger, Donald W. MacCloskey, Donald P. Dollens, Nelson Freeney and Robert K. Reynolds, are citizens of the United States of America residents of the Commonwealth of Virginia and elected board members of the Virginia Federation of Chapters of the National Association of Retired Federal Employees. They have paid income tax during the years 1985 through 1988 to the Commonwealth of Virginia on their income, including that portion of their income representing their federal civil service annuity. They have submitted amended returns for these tax years, representing their income to exclude that portion attributable to their civil service annuity.

4. Remaining named plaintiffs also are citizens of the United States, residents of the Commonwealth of Virginia and members of the National Association of Retired Federal Employees and various chapters of the Virginia Federation of Chapters of the National Association of Retired Federal Employees. They have paid income tax during the years 1985 through 1988 to the Commonwealth of Virginia on their income, including that portion of their income representing their federal civil service annuity. They have submitted amended returns for these tax years, representing their income to exclude that portion attributable to their civil service annuity.

5. Defendant Virginia Department of Taxation is the agency authorized by law in the Commonwealth of Virginia to administer, collect and refund all taxes paid on personal income by Virginia citizens.

JURISDICTION

6. Jurisdiction is based upon Section 58.1-1825 of the Code of Virginia. Defendant has not allowed any of plaintiffs' amended returns and has announced that no refunds for the unconstitutionally collected taxes will be paid. In recognition of defendant's refusal to pay any such refunds unless ordered to do so by a court of competent jurisdiction, the General Assembly has enacted a provision postponing the deadline by which affected taxpayers may file for refunds until one year after final judicial resolution of the question of whether refunds must be paid.

7. Venue is proper under subdivision 13b(4) of Section 8.01-261 of the Code of Virginia.

STATEMENT OF THE FACTS

8. At all times relevant hereto, the Commonwealth of Virginia imposed a tax on the income of the residents of Virginia. Included within the definition of income for purposes of this tax were any and all amounts received by individuals from the United States Government as pension benefit payments. Specifically excluded from income, were amounts received by individuals from the Commonwealth of Virginia, its subdivisions and agencies as pension or retirement benefit payments because of their service as employees, or because of their status as surviving spouses of employees, of the Commonwealth of Virginia, its subdivisions, and agencies. See Code of Virginia, Section 58.1-322(C)(3). This discriminatory treatment of federal retirees violates 4 U.S.C. § 111 and the intergovernmental tax immunity doctrine of the Supremacy Clause of the United States Constitution.

STATEMENT OF CLAIMS

9. Paragraphs 1 through 8 are realleged and incorporated by reference.

10. Virginia's exclusion of state and local annuities from income taxation, while fully taxing federal annui-

ties, violates 4 U.S.C. § 111 and the intergovernmental tax immunity doctrine of the Supremacy Clause of the United States Constitution. Taxes collected under this unlawful scheme are excessive within the meaning of Article 58.1-1823 of the Code of Virginia.

11. The Commonwealth of Virginia has provided by statute that individuals who have paid excessive taxes may, upon the filing of an amended return, obtain a refund. See Code of Virginia, Sections 58.1-1823-1825. The purpose of this provision is to provide an expeditious remedy for relief against taxes that have been erroneously, illegally, or unconstitutionally collected.

12. During the tax years since 1985, plaintiffs have paid excessive taxes which have been unconstitutionally and illegally exacted taxes.

WHEREFORE, plaintiffs demand the following relief:

a. That this Court declare that plaintiffs are entitled, and defendant must pay, refunds for all unconstitutionally assessed and collected taxes they have paid since 1985.

b. That judgment be entered by this Court against the defendant, Virginia Department of Taxation, for the total amount of refund due the plaintiffs for all unconstitutionally assessed and collected taxes that each plaintiff has paid since 1985.

c. That this Court order defendant to pay such refunds to plaintiffs.

d. That this Court provide such other and further relief as the Court deems just and proper.

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(Certificate of Service Omitted in Printing)

IN THE CIRCUIT COURT OF
THE CITY OF ALEXANDRIA, VIRGINIA

Law Action No. CL890462

JOHN BERNARD MORRIS and FRANCES PRIDDY MORRIS
4318 Louis Place, Alexandria, Virginia 22304,
Plaintiffs,

v.

THE VIRGINIA DEPARTMENT OF TAXATION,
Defendant.

AMENDED COMPLAINT

Plaintiffs JOHN BERNARD MORRIS and FRANCES PRIDDY MORRIS, through their attorneys, bring this action to obtain refunds against the Defendant, The Virginia Department of Taxation.

PARTIES

1. Plaintiffs JOHN BERNARD MORRIS and FRANCES PRIDDY MORRIS are citizens of the Commonwealth of Virginia and reside at 4318 Louis Place, Alexandria, Virginia, and have filed income tax returns with the Commonwealth of Virginia at least during the years 1977 through 1988, inclusive.

2. Plaintiff JOHN BERNARD MORRIS currently receives pension benefit payments from the United States Government pursuant to the civil service laws of the United States as a result of his extended service as an employee with agencies of the United States Government.

3. Defendant Virginia Department of Taxation is the Agency authorized by law in the Commonwealth of Virginia to administer, collect and refund all taxes paid on personal income by Virginia citizens.

4. WILLIAM FORST is the duly appointed Tax Commissioner of the Commonwealth of Virginia, and, as such, has the overall responsibility for the administration of the Virginia Department of Taxation.

JURISDICTION

5. Jurisdiction is based upon Section 58.1-1825 of the Code of Virginia. Plaintiffs have paid Virginia state income taxes invalidly, erroneously, and unconstitutionally assessed against them for the taxable years 1977 through 1988. Plaintiffs have filed a claim for refund for invalidly collected and assessed taxes for the taxable year 1985.

6. Venue is proper under subdivision 13 b of Section 8.01-261 of the Code of Virginia.

STATEMENT OF FACTS

7. At all times relevant hereto, the Commonwealth of Virginia has imposed a tax on the income of the residents of Virginia. At all times relevant hereto, the Commonwealth of Virginia has required that the calculation of taxable income for the purpose of imposing the state income tax include any and all amounts received by individuals from the United States Government as pension benefit payments. However, at all times relevant hereto, the Commonwealth of Virginia has, by statute, specifically exempted from the calculation of taxable income amounts received by individuals from the Commonwealth of Virginia as pension or retirement benefit payments because of their service as employees, or because of their status as surviving spouses of employees, of the Commonwealth of Virginia, its subdivisions, and agencies. See Code of Virginia, Title 58.1-322(C)(3).

8. At all times relevant hereto and at least during 1977 through 1988 inclusive, plaintiffs have been required to include and plaintiffs have in fact included in their calculation of taxable income reported to the Commonwealth of Virginia all amounts received by them as pension benefit payments from the United States Government as a result of his employment as civil servants. Plaintiffs have paid Virginia State income tax on all such amounts so included in the calculation of taxable income.

9. Plaintiff has filed amended return for the taxable year 1985 and has sought refund of all taxes paid during that year on income received from the United States Government in the form of pension benefit payments. To date, no action has been taken by the Virginia Department of Taxation with regard to this filing.

10. In April, 1989, Section 58.1-1823 of the Code of Virginia was amended to provide that a claim for refund "for any taxable year beginning on or after January 1, 1985, may be filed within one year from the entry of a final judicial order of a court of competent jurisdiction not subject to further appeal resolving the issue of the application to Virginia income tax law of the United States Supreme Court decision in the case of *Davis v. Michigan Department of the Treasury*, 57 U.S.L.W. 4389 (U.S. March 28, 1989)."

STATEMENT OF CLAIMS

11. Paragraphs 1 through 10 are realleged and incorporated by reference.

12. This Count is against Defendant for unconstitutionally discriminating against plaintiffs in violation of 4 U. S. C., Section 111.

13. The Commonwealth of Virginia has exempted from income taxation amounts received as pension and retirement benefits by retirees of the Commonwealth of Virginia, its subdivisions, and agencies, while refusing to

exempt from income taxation amounts received by retirees of the United States Government or the armed forces of the United States. Such taxation unlawfully, illegally, and unconstitutionally discriminates against federal government and military retirees "because of the source of the pay or compensation" within the meaning of 4 U.S.C., section 111.

WHEREFORE, plaintiffs demand the following relief:

a. This Court determine that Title 58.1-322 of the Code of Virginia is unlawful to the extent it discriminates between federal and state retirees.

b. That defendant be enjoined from enforcing or administering Title 58.1-322 of the Code of Virginia to the extent it unlawfully discriminates against federal retirees.

c. That plaintiffs be awarded the refunds and damages they have suffered as a result of the defendant's unlawful discrimination, including but not limited to, all amounts paid as state income tax on pension and retirement benefits received from the United States plus interest; and

d. That plaintiff be awarded the costs of this suit, including attorneys's fees and such other relief as the Court deems just and proper.

/s/ George J. Rabil
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202-347-1843
Counsel for Plaintiffs

(Certificate of Service Omitted in Printing)

IN THE CIRCUIT COURT OF
THE CITY OF ALEXANDRIA, VIRGINIA

Law Action No. CL890463

GEORGE J. RABIL and HELEN T. RABIL
5321 Truman Avenue
Alexandria, Virginia 22304,
Plaintiffs,

v.

THE VIRGINIA DEPARTMENT OF TAXATION,
Defendant.

AMENDED COMPLAINT

Plaintiffs GEORGE J. RABIL and HELEN T. RABIL, through their attorney, bring this action to obtain refunds against the Defendant, The Virginia Department of Taxation.

PARTIES

1. Plaintiff GEORGE J. RABIL and HELEN T. RABIL are citizens of the Commonwealth of Virginia and reside at 5321 Truman Avenue, Alexandria, Virginia, 22304, and have filed income tax returns with the Commonwealth of Virginia at least during the years 1985 through 1988, inclusive.

2. Plaintiff GEORGE J. RABIL currently receives pension benefit payments from the United States Government pursuant to the civil service laws of the United States as a result of his extended service as an employee with agencies of the United States Government. Plaintiff GEORGE J. RABIL also currently receives separate benefit payments from the United States as a result of his lengthy service on active duty and in the organized reserves in the United States Army. Plaintiff has received

such pension benefits from the United States at least since 1985.

3. Defendant Virginia Department of Taxation is the Agency authorized by law in the Commonwealth of Virginia to administer, collect and refund all taxes paid on personal income by Virginia citizens.

JURISDICTION

4. Jurisdiction is based upon Section 58.1-1825 of the Code of Virginia. Plaintiffs have paid Virginia state income taxes invalidly, erroneously, and unconstitutionally assessed against them for the taxable years 1985 through 1987. Plaintiffs have filed claims for refund for invalidly collected and assessed taxes for the taxable years 1985 through 1987. The Virginia Department of Taxation have denied those claims for refund.

5. Venue is proper under subdivision 13 b of Section 8.01.261 of the Code of Virginia.

STATEMENT OF FACTS

6. At all times relevant hereto, the Commonwealth of Virginia has imposed a tax on the income of the residents of Virginia. At all times relevant hereto, the Commonwealth of Virginia has required that the calculation of taxable income for the purpose of imposing the state income tax include any and all amounts received by individuals from the United States Government as pension benefit payments. However, at all times relevant hereto, the Commonwealth of Virginia has, by statute, specifically exempted from the calculation of taxable income amounts received by individuals from the Commonwealth of Virginia as pension or retirement benefit payments because of their service as employees, or because of their status as surviving spouses of employees, of the Commonwealth of Virginia, its subdivisions, and agencies. See Code of Virginia, Title 58.1-322(C)(3).

7. At all times relevant hereto and at least during 1980 through 1987 inclusive, plaintiffs have been required to include and plaintiffs have in fact included in their calculation of taxable income reported to the Commonwealth of Virginia all amounts received by them as pension benefit payments from the United States Government as a result of his employment as civil servants. Plaintiffs have paid Virginia State income tax on all such amounts so included in the calculation of taxable income.

8. Plaintiffs have filed amended returns for the taxable years 1985 through 1987 and have sought refund of all taxes paid during those years on income received from the United States Government in the form of pension benefit payments. To date, no refunds have been made to plaintiffs by the Virginia Department of Taxation with regard to these filings.

9. In April, 1989, Section 58.1-1833 of the Code of Virginia was amended to provide that a claim for refund "for any taxable year beginning on or after January 1, 1985, may be filed within one year from the entry of a final judicial order of a court of competent jurisdiction not subject to further appeal resolving the issue of the application to Virginia income tax law of the United States Supreme Court decision in the case of *Davis v. Michigan Department of the Treasury*, 57 U.S.L.W. 4389 (U. S. March 28, 1989)."

STATEMENT OF CLAIMS

10. Paragraphs 1 through 10 are realleged and incorporated by reference.

11. This Count is against Defendant for unconstitutionally discriminating against plaintiffs in violation of 4 U.S.C., Section 111.

12. The Commonwealth of Virginia has exempted from income taxation amounts received as pension and retirement benefits by retirees of the Commonwealth of

Virginia, its subdivisions, and agencies, while refusing to exempt from income taxation amounts received by retirees of the United States Government or the armed forces of the United States. Such taxation unlawfully, illegally, and unconstitutionally discriminates against federal government and military retirees "because of the source of the pay or compensation" within the meaning of 4 U.S.C., section 111.

WHEREFORE, plaintiffs demand the following relief:

a. This Court determine that Title 58.1-322 of the Code of Virginia is unlawful to the extent it discriminates between federal and state retirees.

b. That defendants be enjoined from enforcing or administering Title 58.1-322 of the Code of Virginia to the extent it unlawfully discriminates against federal retirees.

c. That plaintiffs be awarded the refunds and damages they have suffered as a result of the defendants' unlawful discrimination, including but not limited to, all amounts paid as state income tax on pension and retirement benefits received from the United States plus interest; and

d. That plaintiffs be awarded the costs of this suit, including attorneys' fees and such other relief as the Court deems just and proper.

//s George J. Rabil
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Counsel for Plaintiffs

VIRGINIA:

IN THE CIRCUIT COURT
OF THE CITY OF VIRGINIA

Case No.: N-8135-1

RAYMOND S. WESTER, COL., USA Ret.,
JOHN C. CHAPMAN, COL., AUS, Ret.,
JACK MAYER, COL., USA, Ret.,

and

ALVIN T. MCCONNELL, COL., USA, Ret.,
Plaintiffs.

v.

VIRGINIA DEPARTMENT OF TAXATION,
Defendant.

SECOND AMENDED COMPLAINT

[Filed Nov. 29, 1989]

Come now the plaintiffs, by counsel, and for their Amended Complaint state as follows:

1) The plaintiffs, bring this action to obtain refunds of the income taxes paid to the Commonwealth of Virginia during one or more of the years 1985, 1986, 1987 and 1988, inclusive, which income taxes were improperly, erroneously and illegally assessed and collected from the plaintiffs, in violation of the Constitution and Laws of the United States.

2) The plaintiffs, Raymond S. Webster, Col., USA (Ret.); John C. Chapman, Col. AUS (Ret.); Jack Mayer,

Col., USA (Ret.); and Alvin T. McConnell, Col., USA (Ret.) are all citizens of the United States and the Commonwealth of Virginia. Each of these plaintiffs is an officer and director of the Military Retirees Taxpayers Association of VA, Inc., an association of individuals who are recipients of retirement benefits from the United States government ("federal retirement benefits") who were assessed and have paid income tax to the Commonwealth of Virginia during one of more of the years 1985 through 1988, inclusive, upon the federal retirement benefits they received.

3) Each of the plaintiffs, assert and claim that the assessment of income tax by the Commonwealth of Virginia upon their federal retirement benefits for the years 1985 through 1988, inclusive, was improper, erroneous and illegal and in violation of the Constitution and Laws of the United States.

4) The defendant, Virginia Department of Taxation, is the agency authorized by law in the Commonwealth of Virginia to administer, collect and refund all taxes paid on personal income by Virginia citizens.

5) This action is being brought pursuant to § 58.1-1825 of the Code of Virginia.

6) At all times relevant hereto, the Commonwealth of Virginia imposed a tax on the income of the residents of Virginia. Included within the definition of income for purposes of this tax were any and all amounts received by individuals from the United States Government as pension benefit payments (referred to as "federal retirement benefits" herein). Specifically excluded from the definition of income, however, were amounts received by individuals from the Commonwealth of Virginia, its subdivisions and agencies, as pension or retirement benefit payments because of their service as employees, or because of their status as surviving spouses of employees, of the Commonwealth of Virginia, its subdivisions, and

agencies. Such exclusion was provided in § 58.1-322 (C) (3) of the Code of Virginia.

7) Virginia's exclusion of state and local pensions and retirement income from income taxation, while fully taxing federal retirement benefits, violates 4 U.S.C. § 111 and the intergovernmental tax immunity doctrine of the Supremacy Clause of the United States Constitution. Taxes assessed and collected under this unlawful scheme are erroneous and otherwise improper within the meaning of § 58.1-1825 of the Code of Virginia.

8) During the tax years since 1985, plaintiffs have paid excessive taxes which have been unconstitutionally and illegally collected pursuant to erroneous and otherwise improper assessments. The plaintiffs are entitled, under the statutory refund provisions of the Code of Virginia, to full refunds of these unconstitutionally exacted taxes.

WHEREFORE, plaintiffs demand the following relief:

a. That this Court declare that plaintiffs are entitled to, and defendant must pay, refunds for all unconstitutionally assessed and collected taxes they have paid since 1985.

b. That judgment be entered by this Court against the defendant, Virginia Department of Taxation, for the total amount of refund due the plaintiffs and for all unconstitutionally assessed and collected taxes that each has paid since 1985.

c. That this Court order defendant to pay such refunds to plaintiffs.

d. That this Court provide such other and further relief as the Court deems just and proper.

RAYMOND S. WEBSTER, COL.,
USA, Ret., etc., *et als.*

By: /s/ Gregory S. Hooe,
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/s/ Mary-Leslie Duty
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(Certificate of Service Omitted in Printing)

VIRGINIA:

IN THE CIRCUIT COURT
FOR THE CITY OF ALEXANDRIA

Nos. CL 891080
CL 890462
CL 890463
CL 891079
CL 891081

HENRY HARPER, *et als.*,
Plaintiffs,

v.

VIRGINIA DEPARTMENT OF TAXATION,
Defendant;

and

ET ALS.

AFFIDAVIT OF W. H. FORST

W. H. Forst, being duly sworn, according to law, states as follows:

1. I am W. H. Forst, Tax Commissioner for the Commonwealth of Virginia. I was first appointed to that position in 1971 by then Governor Linwood Holton, and have been reappointed by each Governor since then, including most recently in 1986 by Governor Gerald L. Baliles.

2. As Tax Commissioner, I am responsible for the administration of the tax laws of the Commonwealth, including the issuance of ruling letters, promulgation of regulations, and determination letters upon taxpayers'

application for correction of tax assessments for any tax administered by the Virginia Department of Taxation.

3. Virginia Code § 58.1-322(C)(2) (repealed by Ch. 3, 1989 Va. Acts Special Session II at 2), which provided a subtraction from federal adjusted gross income for Virginia state and local government retirement benefits, had been a part of Virginia's individual income tax structure since March 31, 1942. *See* Ch. 325, 1942 Va. Acts at 500.

4. This Virginia subtraction enhanced Virginia's state and local government retirement benefits which were lower than federal retirement benefits.

5. The Department recognizes the applicability of the holding in *Davis* to Virginia and by legislative amendments enacted by a special session of the General Assembly in April of 1989, for taxable years beginning on or after January 1, 1989, federal and private retirement income will be treated identically to state and local retirement income. As to prior taxable years, the Department believes that it acted lawfully in taxing federal retirement income based upon the principle of nonretroactivity.

Signed by my hand this 18th day of December, 1989.

/s/ W. H. Forst
W. H. FORST

(Notary Omitted in Printing)

VIRGINIA:

IN THE CIRCUIT COURT
FOR THE CITY OF ALEXANDRIA

(Title Omitted in Printing)

AFFIDAVIT OF ROBERT T. BENTON, Ph.D.

ROBERT T. BENTON, being duly sworn, according to law, states as follows:

1. I am the Chief Economist and Director of the Research Division of the Virginia Department of Taxation, and have been employed in that capacity since 1976. I am responsible for directing and supervising this division's activities, which include forecasting and tracking general fund revenues for the Commonwealth's budget planning process, and developing revenue impacts of proposed tax legislation introduced into the General Assembly, and requested federal legislation with which Virginia is required to conform. The information contained in this affidavit was developed by me and members of my staff working under my direction and supervision.

2. One of my duties in calendar year 1989 was to determine for the Department an estimate of Virginia's potential refund liability for state individual income taxes paid by federal retirees on their federal pension income for taxable years 1985, 1986, 1987 and 1988. The estimated sum of potential tax refunds for these years amounts to $397.3 million. This amount includes estimated taxes paid on federal pension income which are estimated at $329.8 million plus interest of $67.5 million to December 31, 1989. We also calculate, assuming constant interest rates, that interest will continue to accrue on the refund amount at roughly $3.4 million per month.

3. The estimated potential refund claim of $397.3 million constitutes roughly 15.4 percent of all individual income tax revenues collected in calendar year 1987.

4. The total number of individual income tax returns processed for the 1987 taxable year was 2.56 million. Of that number, approximately 415,000 returns included retirement benefits (private, state, local and federal). The number of returns filed by persons receiving civil service or military retirement benefits was 134,000. Since approximately 43 percent of those were in the "married filing separately on a combined return" status where more than one taxpayer files on one return, the total number of persons receiving civil service or military retirement benefits who may be eligible for a refund could be as many as 192,000. In addition, based upon information the Department has received from the Virginia Supplemental Retirement System and the Virginia Municipal League, the number of persons receiving state and local government retirement benefits

(i) from the Virginia Supplemental Retirement System at the end of the calendar years indicated was: 1985—46,024; 1986—48,470; 1987—51,344; and 1988—54,263; and

(ii) from eleven localities having their own independent systems (including eight cities: Alexandria, Charlottesville, Danville, Falls Church, Newport News, Norfolk, Richmond and Roanoke; and three counties: Arlington, Fairfax and Powhatan) as of April, 1989 was approximately 12,000.

Signed by my hand this 18th day of December, 1990.

/s/ Robert T. Benton
ROBERT T. BENTON
Ph.D

(Notary Omitted in Printing)

VIRGINIA:

IN THE CIRCUIT COURT
FOR THE CITY OF ALEXANDRIA

(Title Omitted in Printing)

AFFIDAVIT OF STUART W. CONNOCK

STUART M. CONNOCK, being duly sworn, according to law, states as follows:

1. I am Stuart W. Connock, Secretary of Finance for the Commonwealth of Virginia. I was first appointed to that position in 1984 by then Governor Charles S. Robb, and was reappointed in 1986 by Governor Gerald L. Baliles. I have also served as Secretary of Administration and Finance for former Governor John Dalton; and as Assistant Secretary for Financial Policy and Director of the Department of Planning and Budget for former Governors Dalton and Robb.

2. As Secretary of Finance, I am the chief financial advisor to the Governor. I am responsible for five major agencies delivering financial services to state government, including the Department of Planning and Budget, the Department of Taxation, the Department of the Treasury, the Department of Accounts, and the Department of the State Internal Auditor. Among other things, I am responsible for developing financial revenue forecasts, and the direction and formulation of a comprehensive budget program for the efficient operation of state government for the Governor's consideration. The conclusions contained in this affidavit are derived from the execution of those statutory responsibilities.

3. I have been asked to provide an overview of Virginia's 1990-92 biennial budget, and to provide an assessment of the impact on the budget were a court to order a refund of taxes derived from federal pension benefits in an amount currently estimated to be $397.3 million.

4. *Fiscal Outlook.* The covergence of five issues in the development of the Governor's budget recommendation for the 1990-92 biennium points to intense competition between mandatory spending and available revenues. The five issues are: (1) a softening economy in Virginia and the nation; (2) the cost of tax policy changes enacted by the 1989 General Assembly; (3) the cost of federal mandates in health care and the environment; (4) growth in the number of convicted felons that must be confined in the state's prisons; and (5) budget increases in items such as state employee and faculty salaries, and debt service on previously approved bond issues.

5. *Changes in the Economy.* During the 1980's, Virginia's economy has grown significantly. Population increased by 12.5 percent from 1980 to 1988, four percent above the national population growth rate. Between 1980 and 1987 employment grew twice as fast in Virginia as the United States, increasing 26.4 percent compared with 12.4 percent nationally. Total personal income has increased by 53.4 percent since 1983, placing Virginia eleventh nationally and second in the Southeast. The average wage for all industries in Virginia in 1987 was $384 per week, an increase of 50.6 percent over the 1980 figure of $255. Virginia was one of three states whose outlays for construction were 50 percent above the national average in 1987. But even though Virginia's economy is expected to continue to outperform the national economy, revenue collections for the third quarter of calendar year 1989 indicate a softening in the Virginia economy. The change is most evident in the areas of corporate profits, real estate, net migration, and defense spending.

In real estate, for example, there is evidence of overbuilding in residential and nonresident markets, particularly office structures. Reflecting the downturn in housing sales, state revenues from the recordation tax are down considerably. Net migration declined in Virginia between 1988 and 1989 and indications are that this will continue. Defense spending both in terms of contracting and employment will be adversely affected by the federal government's austerity.

In Virginia, the most recent estimates indicate that the cumulative effect of the economic downturn is a $181 million decline in projected revenues for fiscal year 1990, equivalent to three percent of the annual general fund budget. In response, the Governor has announced a hold on state buiilding projects and has asked selected agencies and institutions of higher education to submit contingency plans to reduce their budgets for the remainder of fiscal 1990.

Current revenue estimates indicate a $219 million decline in projected revenues for fiscal 1991 and 1992.

6. *Revenue Policy Changes.* Tax policy changes enacted by the General Assembly in 1989 have reduced revenues that otherwise would have been available for the 1990-92 budget by $391.1 million. Of this amount, $235 million is attributable to the General Assembly's decision to provide a partial income tax exemption for pension income received by federal retirees, in response to the U.S. Supreme Court's ruling in *Davis v. Michigan* that twenty-three states could not treat the taxation of state and local public pensions differently from federal civilian and military pensions. In Virginia, the *Davis* ruling resulted in the overturning of a practice that had been in effect since 1942. The remaining $156.1 million is due to other tax reform measures enacted by the General Assembly involving tax credits (Virginia coal, low income housing, low and moderate income earners), alterations

to the withholding tax tables, and the transfer of the first $40 million in recordation taxes each year to localities.

The impact of the economic outlook and tax policy changes is a much reduced rate of growth in the 1990-92 budget. With one exception, the growth in each biennial operating budget (general fund) exceeded 22 percent throughout the 1970's and the 1980's. The exception was the 1982-84 budget, which, due to the recession, grew by only 14 percent. Based on available resources, the 1990-92 budget will increase by only 13 percent over the 1988-90 budget.

7. *Federal Mandates.* Congress has imposed numerous requirements upon the states in recent years. Such federal mandates on Virginia will cost an additional $200-$300 million in the next two years. Requirements imposed on the Medicaid program (utilization/inflation; Omnibus Budget Reconciliation Act of 1987; coverage of women and their children up to age 6 under 133 percent of the poverty level) are the most expensive. However, federal mandates in welfare reform, catastrophic care and environmental programs will cost millions more.

8. *Law Enforcement, Drug Prevention and Corrections.* While Virginia has one of the lowest crime rates in the nation; it has one of the higher rates of imprisonment. Arrests have increased, fewer felons are being granted probation and the length of prison sentences has grown. Growth in the number of inmates under state custody in Virginia has averaged almost nine percent per year since 1983, but since last fall inmates in state custody have grown by more than 13 percent. The state's prison population has increased by almost two-thirds since 1980. During the same period the total jail population went up 113 percent. By the end of 1989, an estimated 25,000 people will be incarcerated in Virginia's jails and prisons.

This unprecedented growth in the inmate population in Virginia has driven spending on criminal justice faster

than any other area of state government, except Medicaid. In the last four years, Virginia has increased prison capacity by 44 percent and spent $232 million on building new prisons. Protecting Virginia's citizens accounts for approximately $200 million of Virginia's new costs for 1990-92. New prison and jail construction, costs of law enforcement officials at the State and local levels, increases to the criminal fund and involuntary mental commitment fund and match for federal drug abuse programs are but a few of the areas that must be addressed.

9. *Public Instruction.* Education is a key element in the state-local partnership in Virginia and the level of state assistance to localities for elementary and secondary education is driven largely by application of the statutory Standards of Quality to a model developed by the Joint Legislative Audit and Review Commission. These standards, which spell out pupil-teacher ratios, the funding of inflation, and the basis for establishing competitive teacher salaries, are estimated to require anywhere from $500 million to $600 million above the current budget in 1990-92. In total, education accounts for over half of Virginia's general fund budget.

10. *Summary.* As a result of the present slowdown in the National and state economies, the reduced revenue forecast, and the need to address the federal mandates and current services, present estimates for 1990-92 indicate a potential impact of $219 million in reduced revenues coupled with a loss of $391.1 million due to tax policy changes, resulting in a total revenue decline of $610.1 million at a time when $900 million to $1.1 billion in increased expenditures are sought.

These current estimates will require state agencies to shoulder program reductions. Although revenue estimates and other econmic data are changing and are being refined daily, it appears likely that general fund program reductions ranging between 2 and 6 percent may be necessary, depending on the scope of their application.

To the extent that programs traditionally held harmless are not cut,—medicaid, aid to dependent children, foster care, prisons, mental health hospitals, state police—larger reductions would be required in other areas of government services.

While it now appears that a combination of program reductions and reduced funding recommendations to address federal mandates and high priority issues may be required for the 1990-92 biennium, final information on the budget and any specific proposed reductions will not be available until early January when the Governor submits his proposed budget to the General Assembly.

Signed by my hand this 18 day of December, 1989.

/s/ Stuart W. Connock
STUART W. CONNOCK

(Notary Omitted in Printing)

VIRGINIA:

IN THE CIRCUIT COURT
FOR THE CITY OF ALEXANDRIA

(Title Omitted in Printing)

AFFIDAVIT OF THE HONORABLE A.L. PHILPOTT, SPEAKER OF THE VIRGINIA HOUSE OF DELEGATES

A. L. PHILPOTT, being duly sworn, according to law, states as follows:

1. I have been a member of the House of Delegates of Virginia from Virginia's Eleventh District since 1958. I am the Speaker of the House of Delegates, and have served as its presiding officer since 1980. I am also Chairman of the House Rules Committee, and have served in that office since 1980.

2. I am informed from information provided by the administration that the amount of the potential tax refund at issue in this litigation to date totals nearly $400 million. In addition, I am aware from information provided by the administration and our own legislative staff researchers that revenue forecasts have decreased, due to the softening of the economy and tax policy changes, and that expenditures for mandated human service programs, and critical law enforcement and educational needs, will increase substantially over the next biennium.

3. The Virginia General Assembly is a part-time, citizen legislature which meets in Session for sixty days in even numbered years (commencing the second Wednesday in January). It is during this Session that the General Assembly receives and considers the Governor's budget

recommendations and adopts the Commonwealth's comprehensive biennial budget. During odd numbered years, the General Assembly meets in a shorter session intended to consider house-keeping measures and the fine tuning of programs adopted during the even numbered years.

4. The magnitude of the relief requested in this litigation is a matter of extreme concern for the members of the General Assembly, especially during this period of decreasing revenues and increasing state needs. A court order granting such relief during the budget planning session could require the implementation of tax increases, program reductions, or both, without an opportunity for the considered study and planning necessary to assess the potential impact of such fiscal policy changes on Virginia's citizens, its localities, and its business and economic environment. If the refund were ordered at some point into the biennium, budgetary ramifications would have to be considered during the short session, or even during a Special Session, at a time when potential revenue raising or program reduction options would be even more limited.

5. Regardless of the timing of any court ordered refunds, the most troubling aspect of the extraordinary relief requested in this case is that it would cause harm to the people and the government of Virginia where they have done no wrong—when they simply have relied in good faith on an element of a revenue raising program which remained unchallenged for nearly fifty years, and then acted promptly to reform that program, to the benefit of the federal retiree plaintiffs in this case, when new judicial interpretations in the law were handed down by the United States Supreme Court.

Signed by my hand this 18th day of December, 1989.

/s/ A. L. Philpott
A. L. PHILPOTT

(Notary Omitted in Printing)

VIRGINIA:

IN THE CIRCUIT COURT
FOR THE CITY OF ALEXANDRIA

(Title Omitted in Printing)

AFFIDAVIT OF THE HONORABLE STANLEY C. WALKER

STANLEY C. WALKER, being duly sworn, according to law, states as follows:

1. I am Stanley C. Walker, President Pro Tempore of the Senate of Virginia. I have been a member of the Virginia Senate since 1972, and was a member of the House of Delegates from 1964 through 1971. I am Chairman of the Senate Committee on Rules, and the second ranking member of the Senate Committee on Finance.

2. As the President Pro Tempore and as second ranking member of the Senate Committee on Finance, I have dealt for a number of years with issues which involve taxation, general and special revenues of the Commonwealth, and matters concerning the expenditure of state funds. The statements and conclusions contained in the affidavit are derived from my experiences in these legislative capacities.

3. I have been asked to provide an assessment of the Commonwealth's fiscal outlook for the 1990-92 biennium. The combination of slowing revenue growth and substantial spending requirements which are non-discriminatory will force the Governor and General Assembly to pare significantly government operations and services during the next biennium. The result will be that almost no new funds will be available to continue the progress made in

improving the quality of public education, meeting the basic needs of Virginia's most disadvantaged populations, or promoting economic development in the state's most under-utilized regions. Indeed, it is virtually certain that reductions will be necessary in many of the services considered by Virginia's residents to be essential.

4. *Revenue Outlook.* Virginia has been fortunate throughout the 1980's. Economic growth during the period brought healthy revenue growth. Except for the recession-constrained biennium of 1982-84, revenue growth has approximated 20 to 22 percent per biennium over the last 10 years. Growth of that magnitude was necessary, however, because economic growth and population growth came hand-in-hand. And with population growth came increased service demands in transportation, public and higher education, health and human resources, and in public safety. Although population growth and hence increased service demand will continue, revenue growth for 1990-92 is forecast to be only about 13 percent—lower than in any biennium of the 1980's and lower even than during the recession of 1982-84. At that level, new revenue available to deal with all cost increases to be funded in the next biennium—both discretionary and non-discretionary—will be only about half of what they were in 1988-90.

5. *Reasons for Revenue Decline.* The causes of this revenue problem have been well documented. There is mounting evidence of an economic downturn, with declining corporate profits, slowing of housing sales, and weak retail activity. Prospective cuts in federal spending could well exacerbate the problem, since Virginia is highly dependent on federal defense spending. The impact of these economic trends on revenues is made more significant by several legislative decisions to divert general revenue for specific purposes—most notably as tax relief for retirees. Other examples include tax credits granted to low income persons, and tax credits for con-

struction of low-income housing. The combined effect of these will be to reduce by about $400 million the revenue forecast which would be produced based on economic factors alone. Based on current forecasts, total general fund revenue for 1990-92 will approximate $13.00 billion.

6. *Non-Discretionary Spending.* From the $13.0 billion must come all the general fund costs of state government. Base spending carried forward from 1988-90 totals $12.3 billion, leaving inadequate funds available to cover all cost increases to be considered. Three areas will consume virtually all of the available revenue—prison construction, Medicaid increases, and statutorily based aid to localities.

(a) Since 1986, Virginia has increased its prison capacity by about 50 percent, at a lost of more than $230 million. Nevertheless, the Commonwealth faces an increasing deficit of prison space. Current forecasts point to the need to accommodate nearly 5,000 additional prisoners by June 30, 1992. Cost estimates to meet the additional space will approach $170 million. Operating costs for prison facilities already built and coming on-line in 1990-92 will consume another $200 millon. These cost estimates do not account for the need to develop alternatives to incarceration, treatment programs for drug offenders (who comprise over 20 percent of convicted felons), and the need to fund job training and educational programs for inmates. If these costs are factored in, the funding estimates for meeting correctional needs expand proportionately.

(b) Medicaid cost increases are the second major component of non-discretionary spending requirements. Over the last 10 years, the costs of providing Medicaid services have grown astronomically. The focus of the program has changed—largely through federal mandates—from a health service program for low-income individuals to a health program for the elderly and disabled. Many services which were once optional features of Virginia's benefits package are now mandated by federal law. The result is that, at this time, the scope and emphasis of the program is largely non-discretionary. Cost increases associated with federal mandates, along with inflational increases in medical costs could approach $300 million in 1990-92.

(c) Statutorily based aid to localities will consume the remainder of available new revenue. One-third of the state's sales tax proceeds, dedication of recordation tax proceeds, aid to localities with police departments, and state aid for several educational entitlements associated with handicapped children will require over $500 million. Like Medicaid and prison construction and operations, these amounts are non-discretionary.

7. *Remaining Spending Requirements.* Using even the most conservative estimates of high priority spending requirements, the minimum remaining needs list exceeds $900 million. Included in this total are minimum increases in state aid for public education, minimum salary increases for faculty and classified employees, funding of a maintenance program for state buildings, additional law enforcement initiatives to fight drug-related crime, and proposals to improve funding of community mental health services. The clear reality is that there will not be sufficient revenue to deal with these increased needs, at even a minimal level.

8. *Options for Addressing the Budget Problem.* There are 3 generic options for dealing with the budget problems facing the Commonwealth: (1) reduce base budgets; (2) postpone discretionary spending; and (3) pursue additional revenues. None offers an easy choice. Almost 50 percent of the Commonwealth's budget is distributed as aid to localities. Another 13 percent is composed of aid to needy individuals, much of which is driven by federal requirements. About 10 percent goes for highly sensitive services such as law enforcement and adult corrections.

About 1 percent is debt service. And half of the remaining total is aid for higher education. To balance a resource shortfall exceeding $800 million—the extent of Virginia's budget problem—would require across-the-board cuts of about 7 percent. Because much of the budget is not discretionary spending, however, cuts on non-exempt programs and services would have to be much larger. Regardless of which programs are exempt, however, the impact of balancing an $800 million budget problem will be serious, and long-lasting. If the court were to compound this difficulty by requiring refund of the $397 million under dispute in this case, the impact would require measures which could well cause great hardship for the people and the government of Virginia.

Signed by my hand this 18 day of December, 1989.

/s/ Stanley C. Walker
STANLEY C. WALKER

(Notary Omitted in Printing)

VIRGINIA:

IN THE CIRCUIT COURT
FOR THE CITY OF ALEXANDRIA

(Title Omitted in Printing)

AFFIDAVIT OF HUNTER B. ANDREWS

HUNTER B. ANDREWS, being duly sworn, according to law, deposes and states as follows:

1. I, Hunter B. Andrews, am Chairman of the Finance Committee of the Senate of Virginia. I have been a member of the Virginia Senate since 1964, a member of its Finance Committee since 1968, and Chairman since 1986.

2. As Chairman of the Senate Finance Committee, I preside over the Senate Committee which has responsibility for taxation, general and special revenues of the Commonwealth, and all matters concerning the expenditure of state funds. The statements and conclusions contained in the affidavit are derived from my experience in this legislative capactiy.

3. I have been asked to provide an assessment of the Commonwealth's revenue and budget outlook for the 1990-92 biennium. The Commonwealth faces a resouurce shortfall in the 1990-92 biennium. A complete analysis of the fiscal outlook shows that spending requirements will exceed available resources by more than $800 million in 1990-92, and could well exceed revenue by as much as $1.0 billion. The roots of the resource shortfall can be traced to the interrelated effect of three conditions: (1) a general slowdown in economic growth statewide, coupled with the diversion of significant amounts of revenue for tax relief

and aid to localities; (2) the fiscal impact of federal mandates and increased utilization of Medicaid, an entitlement program for which very little state flexibility remains; and (3) a growing and serious shortage in the Commonwealth's capacity to house convicted felons.

4. *Revenue Forecast.* Virginia's current revenue forecasts indicate a slowing of economic growth in 1990-92, compared to the post-recession 1980's. A slowing of housing starts, a decline in corporate profits, and slowing in migration into Virginia foreshadow continuing economic concern. While not unique to Virginia, this slowdown will have a disproportionate effect on the Commonwealth whose population and demand for government services is increasing.

The economic slowdown has been compounded in 1990-92 by the diversion of substantial amounts of general fund revenue for tax relief and aid to localities. Preferential tax relief granted to retirees in 1989 will reduce 1990-92 collections by more than $230 million; income tax credits for low-income persons will reduce collections an additional $56.6 million; dedication of recordation tax proceeds as aid to localities will reduce general revenues by another $80 million; and several smaller tax policy changes will reduce revenues by an additional $22.4 million—a total reduction of $389 million in funds which otherwise would be available to the general fund.

The combined effect of an economic slowdown and revenue diversion for tax relief and aid to localities will be a significant reduction in revenue available for appropriation in 1990-92. Revenue growth will likely approximate only about 13 percent more than in 1988-90—lower than in any biennium in the 1980's, and lower even than the 1982-84 period, which was dominated by a national recession.

5. *Federal Mandates.* Fiscal constraints at the federal level have led increasingly to actions which have shifted program and fiscal responsibilities to the states. A principal example of this is Medicaid, a health-care entitlement program serving low-income and disabled individuals. Expenditure growth for Medicaid has been staggering. Increases have been fueled by the twin forces of the increased costs of medical care and federally mandated expansion of program eligibility. In 1990-92, Medicaid will require nearly $300 million over current expenditures. Because Medicaid is an entitlement program, the Commonwealth has almost no option about service delivery. Funding is therefore non-discretionary, and must be provided.

6. *Prison Population.* The third fiscal pressure facing the Commonwealth involves corrections. Since 1986, the Commonwealth has funded close to a 50 percent expansion of its adult prison capacity. At the same time, and in spite of its best efforts, prison overcrowding has increased —both in state prisons and in local jails. Current forecasts indicate that nearly 5,000 additional prisoners will need to be housed by June 30, 1992. The long-term prospect is for continuing steep increases in prisoners.

The capital cost of meeting the bed demand in 1990-92 will exceed $75 million, and could well approach $170 million. The cost of operating these facilities and others which will open during 1990-92 will exceed $200 million. Expansion of treatment programs and alternatives to incarceration will drive this total still higher. Like Medicaid, correctional costs are non-discretionary, and must be dealt with.

7. *State Responses to the Budget Outlook.* The Commonwealth's options for dealing with its resource shortfall are limited. The base budget for operating state programs, without considering either non-discretionary or discretionary spending increases, totals $12.3 billion. If revenue forecasts are accurate, and past experience has shown them to be, available revenue will approach $13 billion. The limited revenue available will be inadequate to fund Madicaid cost increases, additional operating and

capital costs associated with housing state prisoners, all increases in aid to localities (including aid to public education), salary increases (if any) for faculty and classified employees, and all other funding increases which will be required. When even a conserative list of spending requirements is tabulated, it exceeds available revenues by more than $800 million.

The options for dealing with a resource shortfall of this magnitude are limited. The Commonwealth may reduce on-going state programs, defer costs and spending whenever possible, attempt to shift the cost of services more and more to service recipients and clients, and explore ways of producing additional revenue.

Reductions in on-going state programs are not produced without significant effects on service recipients and localities. Fully 46 percent of the Commonwealth's general fund revenues flow directly as aid to localities. Another 13 percent is spent as need-based assistance to individuals, including Medicaid. About 1 percent is debt service on outstanding bonds and another 10 percent is spent on sensitive services like corrections and state police. The remaining 29 percent comprises the balance of state functions and activities, including higher education. A shortfall of $800 million could require across-the-board reductions of nearly 7 percent. Because much of the budget represents non-discretionary outlays, however, some programs would have to be exempted. The result would be deeper cuts in programs and agencies not exempt.

In a state with a growing population and hence an increasing standard for government services, the impact of resource shortfall will be severe. If the Court were to require a refund of taxes derived from federal pension benefits in an amount of the shortfall would be increased by half. The magnitude of this combined resource shortfall would force reductions across all areas of state

government—including aid to needy individuals, state support of localities, and essential government services, such as adult corrections.

Signed by my hand this 18th day of December, 1989.

/s/ Hunter B. Andrews
HUNTER B. ANDREWS

(Notary Omitted in Printing)

VIRGINIA:

IN THE CIRCUIT COURT
FOR THE CITY OF ALEXANDRIA

(Title Omitted in Printing)

AFFIDAVIT OF THE HONORABLE ROBERT B. BALL, SR.

ROBERT B. BALL, SR., being duly sworn, according to law, states as follows:

1. I am Robert B. Ball, Sr., Vice Chairman of the House of Appropriations Committee of the Virginia House of Delegates and Chairman designate effective the 1990 session of the General Assembly. I have served in the House of Delegates since 1972. I was first appointed to the House Appropriations Committee in 1974. I am designated to become Chairman of the Committee, by appointment of the Speaker of the House of Delegates, on January 10, 1990.

2. As Chairman of the House Appropriations Committee, I will be responsible for leading the Committee's efforts to review and amend the Governor's 1990-92 spending proposals for approval by the House of Delegates, and I will lead the House budget conferees in formulating a final House/Senate agreement on the budget. The conclusions stated in this affidavit are derived from information made available to me from executive budget analysts, and legislative budget and finance analysts.

3. I have been asked to provide an overview of Virginia's 1990-92 biennial budget, and to offer my assessment of the impact on the budget if a court were to order

the refund of taxes derived from federal pension benefits which amounts at this time to an estimated $397.3 million.

4. *Growth in State Revenues.* In preparing the 1990-92 biennium budget, it is apparent that several factors will combine to make it very difficult for the Governor and the General Assembly to arrive at a spending package in balance with available revenues. Recent tax policy changes have reduced anticipated revenues by nearly $400 million which would otherwise be available for spending. In 1989 the General Assembly reduced the 1990-92 revenue stream by enacting a pension income subtraction (which accounts for $235 million of this decline), a tax credit for purchasing Virginia coal, a low income housing credit, a transfer of state collected recordation taxes to local governments, revised income tax withholding tables, and an income tax credit for low and moderate income earners.

At the same time, Virginia's economy is now showing signs of a weakening national economy. Tax collections for the first four months of this fiscal year were actually less than the first four months of the prior year. While still likely to outperform the nation, Virginia's economic growth is now projected to be less than the official forecast approved by the 1989 General Assembly. Slow growth combined with a reduced tax structure will cause 1990-92 revenues to grow by roughly 13 percent over the 1988-90 biennium. This is the lowest forecast of Virginia revenue growth in two decades.

5. *Required State Spending.* Congressional efforts to reduce the federal deficit have shifted a greater burden to the states for funding several federal/state programs, particularly human services. Virginia's increased responsibilities for funding Medicaid, Welfare Reform, catastrophic health care and environmental programs will cost an additional $200-$300 million in 1990-92. In addition, the state's statutory requirements for funding the

public school Standard of Quality (the school aid funding formula), including teacher salary increases, will cost over $500 million above the base budget. According to the Governor's Commission on Prison and Jail Overcrowding, new construction and operating costs to alleviate overcrowded prisons and jails will cost an additional $421 million over the next two years. Another $1.2 billion will be required in 1992-94.

6. *Impact On State Programs.* The combination of reduced revenue growth and new requirements for state spending could require the base budgets of state agencies to be cut across the board by at least 5 percent in each year of the 1990-92 biennium. If certain high priority human services and safety programs are held harmless, such as public school funding, Medicaid, Aid to Families with Dependent Children, foster care, prisons, and law enforcement, the amount of cuts to the remaining programs would be significantly greater.

In my judgment, state agencies will not be able to absorb further budget reductions beyond those now foreseen for the coming biennium without seriously eroding state services. Cuts similar to these were enacted in 1982-84 during the Robb administration. Since then, most state agency budgets have been "level funded." This means that nonpersonnel costs have simply been held constant without adjustments for inflation. In general, only personnel costs have been advanced to pay for employee salary increases approved by the General Assembly.

If the court were to require the Commonwealth to refund nearly $400 million to plaintiffs, additional budget cuts would have to be enacted, placing critical state/local programs in jeopardy. For example (and this partial listing is not intended to presume what the Governor or the General Assembly in fact will propose), public school funding could be cut. In spite of state and national objectives to improve teacher salaries and our interna-

tional competitiveness in education, the steady progress made in state assistance to local school divisions in the last ten years could be reversed. The Commonwealth's objectives to alleviate overcrowding in prisons and jails could be put on hold, exacerbating already dangerous conditions. State assistance to local law enforcement agencies could be reduced, retarding the Commonwealth's war on drugs. Recent initiatives to create a revolving loan fund to rehab housing for low and moderate income families could be suspended, and repairs and corrective maintenance on buildings and grounds at state facilities around the Commonwealth could be suspended.

Signed by my hand this 10 day of December, 1989.

/s/ Robert B. Ball, Sr.
ROBERT B. BALL, SR.

(Notary Omitted in Printing)

VIRGINIA:

IN THE CIRCUIT COURT
FOR THE CITY OF ALEXANDRIA

(Title Omitted in Printing)

AFFIDAVIT OF THE HONORABLE C. RICHARD CRANWELL

C. RICHARD CRANWELL, being duly sworn, according to law, states as follows:

1. I have been a member of the Virginia House of Delegates from the Fourteenth District since 1972. I served as Ranking Member of the House Finance Committee from 1983 to 1987, and presently serve as Chairman of the House Finance Committee.

2. The House Finance Committee is responsible for considering and recommending to the full House tax policies and legislation determining the composition of Virginia's state tax programs, which sets the level of state revenue collections.

3. I am informed from information provided by the Administration and my committee staff that the amount of the potential tax refund at issue in this litigation to date totals nearly $400 million. I am further informed that interest on this total continues to accrue at an amount estimated to be $3.4 million per month. In addition, I am aware from information provided by the Administration and my Committee staff that revenue forecasts have decreased for the 1990-92 biennium, due to the softening of the economy and tax policy changes, and that expenditures for mandated human service programs, and critical law enforcement and educational needs, will increase substantially over the next biennium.

4. A court order granting the refund relief requested in this litigation could require revenue increases, program reductions, or both, to absorb the loss. In any event, such an order would have a significant impact on all Virginians. Over 80 percent of Virginia's general fund is generated from individual and corporate income taxes, and the state sales and use tax (over half of the state sales and use tax is returned to the localities for education). No other single source of general fund revenues, assuming current rates and bases, generates even half of the refund amount claimed in this litigation. Accordingly, if a revenue increase were required by an order granting refunds to the federal retirees, the impact likely would be felt by a broad spectrum of individual taxpayers.

5. Virginia has a proud history of fiscal responsibility and accountability, and long has been regarded as providing a highly favorable climate for business and industry. For this reason, I believe that if refunds of the magnitude implicated by this litigation were ordered, the General Assembly would address the problems with actions calculated to preserve Virginia's preferred standing in the business and financial community. This means that refund losses likely would be recouped not through tax increases, but through cuts in discretionary programs supported with general fund revenues, such as drug enforcement, housing assistance or state support to local education. The impact on these types of programs could be particularly severe during this period of already declining revenues and rapidly increasing mandated state needs.

Signed by my hand this 18th day of December, 1989.

/s/ C. Richard Cranwell
C. RICHARD CRANWELL

(Notary Omitted in Printing)

COMMONWEALTH OF VIRGINIA

IN THE CIRCUIT COURT
OF THE CITY OF CHEASPEAKE
Courtroom II, South Norfolk

SUBPOENA IN CHANCERY #5459

RE: Application of land owners to Chesapeake Circuit Court for relief from erroneous and unconstitutional assessments of real properties within a portion of Washington Borough of Chesapeake

SERVE: William L. Forbes, City Attorney
Civic Center
Chesapeake, Va.

The party upon whom this writ and the attached paper are served is hereby notified that unless within twenty-one (21) days after such service, response is made by filing in the Clerk's Office of this court a pleading in writing, in proper legal form, the allegations and charged may be taken as admitted and the court may enter a decree against such party, without further notice, either by default or after hearing evidence.

Appearance in person is not required by this subpoena. Done in the name of the Commonwealth of Virginia, this 5th day of March, 1974.

JULIAN R. RAPER
Clerk

By /s/ [illegible]
Deputy Clerk

HENRY E. HOWELL, JR., ESQ., p.q.
908 Maritime Tower, Norfolk, Va.

(Office Address)

VIRGINIA:

IN THE CIRCUIT COURT
FOR THE CITY OF CHESAPEAKE.

In Re: APPLICATION OF LAND OWNERS TO THE CIRCUIT COURT FOR THE CITY OF CHESAPEAKE FOR RELIEF FROM ERRONEOUS AND UNCONSTITUTIONAL ASSESSMENTS OF REAL PROPERTIES WITHIN A PORTION OF WASHINGTON DISTRICT OF THE CITY OF CHESAPEAKE.

APPLICATION FOR RELIEF

FIRST:— Applicants are owners of real properties within the hereinafter described portion of the Washington District of the City of Chesapeake, Virginia:

Beginning at a point on the South side of Military Highway, where the same intersects the Southern Branch of the Elizabeth River; and thence in a generally easterly direction along the southern right-of-way of the said Military Highway to its intersection with the right-of-way of Interstate 404; and thence along Interstate 404 in a southeasterly direction to its intersection with Interstate 64; thence crossing over said Interstate 64 to its southerly right-of-way; and thence along said right-of-way in a northeasterly direction to the property now or formerly Mack Truck, Inc.; and thence following the said property line and the property line of others in an easterly direction to its intersection with Tintern Street; and thence southeasterly along the said Tintern Street to its intersection with Battlefield Boulevard; thence crossing over the said Battlefield Boulevard to its easterly right-of-way; thence southerly along said right-of-way to its intersection with Thrasher Road; thence in an easterly direction along said Thrasher Road to the easterly right-of-way of the Norfolk and Southern Railroad; thence along the easterly right-of-way of said railroad to its intersection with the

northerly property line of property now or formerly owned by the Commonwealth of Virginia, better known as the Greenbrier Prison Farm; and thence along said property line in a northerly direction to its intersection with Greenbrier Road; thence along said Greenbrier Road in a southerly direction to its intersection with the southerly line of the property owned by the Irving Co., better known as Greenbrier Farm Tract; thence in an Easterly and Northerly direction along said property line to its intersection with the City line between Chesapeake and Virginia Beach; thence in a southerly and easterly direction along said corporate line to its intersection with the North Landing Creek; thence northerly and westerly along said creek and the Chesapeake and Albemarle Canal to its intersection with the Southern Branch of the Elizabeth River; thence continuing in a westerly and northerly direction along the last mentioned river to its point of beginning.

SECOND:— Each of the parties named in this Article Second have been aggrieved by the erroneous and unconstitutional assessments of our respective properties, the taxes based upon which assessments became due and payable on December 5, 1972, and we petition this Honorable Court pursuant to § 58-1145 of the Code of Virginia to adjudicate that the said assessments are not uniform in application, are erroneous under the laws of Virginia and unconstitutional under the Constitutions of the Commonwealth of Virginia and the United States. A designation of these applicants and their properties are as follows:

Name	Properties
Capehart, James A. and R.D.	.74 Acres Mill Dam, Map 027 Parcel 0006.
Grimes, Ada D. and Linwood H.	1 Acre Mill Dam, Map 027 Parcel 0007.
Wentz, Benjamin F., Jr. and Virginia L.	1.62 Acres Mill Dam, Map. 027-A-04, Parcel 0011.

THIRD:— Each of the parties named in this Article Third have been aggrieved by the erroneous and unconstitutional assessments of our respective properties, the taxes based upon which assessments became due and payable on December 5, 1973, and we petition this Honorable Court pursuant to § 58-1145 of the Code of Virginia to adjudicate that the said assessments are not uniform in application, are erroneous under the laws of Virginia and unconstitutional under the Constitutions of the Commonwealth of Virginia and the United States. A designation of these applicants and their properties are as follows:

Name	Properties
Anderson, J.R. and Gayle V.	2 Acres, Elbow Road I Butts Lyons Plat, Map 038, Parcel 0018.
	2.25 Acres, H. Butt Lyons Plat, Map 038, Parcel 0017.
	2 Acres, J. Butts Lyons Plat, Map 049, Parcel 0115-J.
Baggott, Elmor C., Jr. and Betty H.	.465 Acres, Portion of Parcel E, Subdivision of Odenhall Farm, Map 029, Parcel 0013.
Blanchard, James W. and Betty Jean	.834 Acres, Great Bridge Blvd., Map 036, Parcel 0226.
Brown, Bertio D. (aka Bertie L)	30 Acres, Elbow, Map 039, Parcel 0003.
	1 Acre, School Prop. Elbow, Map 039, Parcel 0028.
	8.1 Acres, Elbow, Map 039, Parcel 0027.
Butt, Thomas L.	703 Acres, Elbow, Map 50, Parcel 66
	35 Acres, Elbow, Map 39, Parcel 11
	Farm land and residence, Map 39, Parcel 6.
Campbell, Joseph J., Jr.	20 Acres, Turnpike Rd., Elbow, Map 038, Parcel 0079.

Name	Properties
	5 Acres, Turnpike Rd., Elbow, Map 038, Parcel 0080.
Clark, Thomas and Nell	5 Acres Liberty Road Neck, Map 036, Parcel 0072.
Credle, Luther and Gladys, C.	1.8 Acres, Par A. Davis Prop. Map 038, Parcel 0025.
Credle, M. F. and Dorothy E.	2.3 Acres, Par A of C A & E G Davis Prop. Map 038, Parcel 0027.
Croef, Ludford T., Jr. and Lorraine M.	1.91 Acres, Gt. Bridge Blvd., Map 036, Parcel 0120-C.
	12.5 Acres, Gt. Bridge Blvd. Map 036, Parcel 0119.
Cross, Mary E.	12.5 Acres, Kempsville Rd., Map 038, Parcel 0118.
Cutherell, Elmer B. & Dorothy A.	Gt. Bridge Blvd PC, Map 036, Parcel 0159.
	.53 Acres, Gt. Bridge Blvd., Map 36, Parcel 147-B.
Davis, Alice S. and Estate Thomas C. Davis, Sr.	7.42 Acres, Elbow Rd, Map 038 Parcel 0082-A.
	7.58 Acres, Elbw Rd., Map 038, Parcel 0082.
Davis, Garland and Louise	.64 Acres, Elbow Rd, Map 038, Parcel 0034-B.
Davis, John E. and Mary E.	.17 Acres, Pt. 17 Linkorey, Map 037, Parcel 0007.
Davis, Rosa Adell	26.58 Acres, Elbow Rd., Map 038 Parcel 0034.
Davis. Thomas C., Jr.	14 Acres, Elbow Rd., Map 038, Parcel 0081.
DeBaun, Annie R.	That portion of the property described as 85.480 Acres, Mill Dam and Route 13, Parcel 0034, Map 166, as lies within Washington District.
Dillon, Catherine I.	64.50 Acres, Elbow, Map 039, Parcel 029.
Etheredge, Hugh W.	130 Acres, Taylor Tr. Map 047, Parcel 0091.

Name	Properties
Etheredge, Hugh W., et als	266.76 Acres, Gt. Bridge Blvd. Map 047, Parcel 0088.
Etheredge, Iva W.	4.85 Acres, Gt. Bridge Blvd. May 047, Parcel 0099.
Etheredge, James M., Jr.	Map 036 Parcel 170, Gt. Bridge Rd.
Faris, Rose M. and Hoover, S.P.	32.177 Acres, Kempsville Rd. Nr. Butts Sta., Map 038, Parcel 0096.
Finck, William E. and Ann L.	22.650 Acres Neck, Map 035, Parcel 0086.
	.35 Acres, 2 Wm.E. Finck Prop. Map 036-C-04, Parcel 0002.
	.35 Acres, 4 Wm. E. Finck Prop. Map 036-C-04, Parcel 0004.
	18 Oak Grove Homes, Map 048-B-02, Parcel 0018.
	1.06 Acres Parr Farm, Map 027, Parcel 0019
	34 Oak Grove Homes, Map 048-B-02, Parcel 0034.
	11.35 Acres, Gt. Bridge Blvd. Map 046, Parcel 0133.
	33.10 Acres, Gt. Bridge Blvd. Map 036, Parcel 0021.
	34.089 Acres, Neck, Map 035, Parcel 0085.
Godfrey, M. L. Jr. and Marjorie D.	.45 Acres, Nr. Butts Station PC, Map 037, Parcel 0048.
	3.92 Acres, Nr. Butts Station, Map 037, Parcel 0047.
	Nr. Butts Station, Map 037, Parcel 0049.
Gower, L. M. Sr. and Bertha S.	1.04 Acres, Tr. 2 B. Griffin Plat, Map 038, Parcel 0020-A.
Hall, James G. and Cleo H.	3 Acres, Elbow Rd. Par A & B E.H. Pugh Plat, Map 038, Parcel 0056-J.

Name	
Harrison, Earl J. and Betty O.	.50 Acres, Pt. R.O. Croel Prop., Map 036, Parcel 0128-B.
Harrison, Graham & Matilda	Tract 13 Old Farm, Map 036, Parcel 0126.
Harrison, Graham R. and Joan	.50 Acres, Elbow, Map 039, Parcel 029-A.
Harrison, J.A. and Lille Mae	.73 Acres, Homestead Blvd., Map 036, Parcel 0129.
Hedrick, Norman L. and Alice	3.05 Acres, Great Bridge Rd., Map 036, Parcel 0268.
Hollowell, Norman Ray	1.87 Acres, Pt. 17 Linkorey Realty, Map 037, Parcel 0008.
Horner, Clyde and Helen H.	76 Westover, Map 027-A-05, Parcel 0076.
JEH, BHB, AHJR Corps.	3.65 Acres, Iron Bridge Fm. Map 026, Parcel 0035.
	8.5 Acres Cleveland Place, Map 035-A-06, Parcel 0000.
	6 Acres Southern Br. Cleveland Pl. Map 035, Parcel 0079.
	21 Acres Southern Br. Map 035, Parcel 0077.
Jennings, Walter E. and W. Stanley	5.5 Acres, Pt. Est. of Cordelia F. Jennings, Map 039, Parcel 0007-D.
	99.13 Acres, Elbow Road, Map 038, Parcel 0036.
	1 Acre, Elbow, Map 039, Parcel 0019.
Johnson, Charles F. and Judith S.	3.704 Acres Par 1 C.F. & J.S. Johnson Plat, Map 038, Parcel 0056-N.
	4.413 Acres Par 2 C.F. & J.S. Johnson Plat, Map 038, Parcel 0056-O.
	1204 Bryant Drive, Map 38, Parcel 56-M.
	Lot 16 Elpike Manor.
	Lot 17 Elpike Manor.

Name	Properties
Kerlin, John N. & Alice W. Davis	178 Acres, Gt. Bridge Blvd., Map 036, Parcel 0143
Lowry, William L and Mellie T.	15 Acres, Elbow Road, Map 038, Parcel 0083.
McPherson, B. L., Sr.	Tract #8, Great Bridge Blvd.
Manning, Mac E. and Marion C.	Lots 5, 6, Block 13 Norfolk Highlands, Sub 1, Map 020-A-01, Parcel 13-0005.
Martin, F. K. and Ruth Wirt	.70 Acres, Pt. Linkorey Realty Par A, Map 048, Parcel 0091-A.
Melson, Julian R.	2.79 Acres, Gt. Bridge Blvd., Map 036, Parcel 0179.
Minter, Irene H. and James M.	1.61 Acres, Elbow, Map 039, Parcel 0022.
	4.93 Acres, Elbow, Map 039, Parcel 0023-A
	89.51 Acres, Elbow, Map 039, Parcel 0020.
Moffatt, Harry A. & Cora C.	1 Acre, Pt. 3 Linkorey Realty Corp., Map 048, Parcel 0104.
	2.4 Acres, Pt. 4 Linkorey Realty Corp., Map 048, Parcel 0103.
Moseley, Indiana (Foreman, Mary)	1.817 Acres, Oak Grove, Map 048, Parcel 0080.
Osmundson, Gary L. and Nancy L.	.59 Acres, Elbow, Map 038, Parcel 0045-A
	.445 Acres, Elbow, Pt N.D. Osmundson Prop., Map 038, Parcel 0045-B
Osmundson, Julius, Executor Estate of Narcissus D. Osmundson	12.11 Acres, Elbow, Map 038, Parcel 0041.
	19.1 Acres, Elbow, Map 038, Parcel 0045.
Outten, George E., Jr. et als	17.31 Acres, Gt. Bridge Blvd. Map 036, Parcel 0182.
Outten, George E., Jr. & Madylon A.	4.44 Acres, Pt. Outten Farm, Map 036, Parcel 0182-A.

Name	Properties
Parker, Henry G. and Florence V.	.5 Acres, Elbow, Map 038, Parcel 0031.
Parker, Randolph P.	21.80 Acres, Elbow, Map 038, Parcel 0037-A
Sanders, E. W. and Thelma G.	10.5 Acres, Elbow Rd. Tr.7, B. Griffin Plat, Map 049, Parcel 0101.
	7.6 Acres, Par. 1 B Griffin Plat. Map 038, Parcel 0019.
	6.4 Acres, Tr. 6B Griffin Plat, Map 049, Parcel 0100.
	12.25 Acres, Tr. 4 B Griffin Plat, Map 049, Parcel 0116.
	2.46 Acres, Tr. 2 Bertha Griffin Plat, Map 038, Parcel 0020.
	19 Acres, Tr. 5 B Griffin Plat, Map 049, Parcel 0099.
Sawyer, James E. and Linda D.	.68 Acres, Elbow Road, Map 038, Parcel 0034-A.
	.4 Acres, Elbow Rd. 210 x 80, Map 049, Parcel 0146.
Sawyer, Victor L.	5.01 Acres, Part Barton Tr. Map 036, Parcel 0206.
Sawyer, William C. and Margaret	22 Acres, Elbow Rd. Pt. V.D. Torbert Prop. Map 049, Parcel 0150-A.
	.34 Acres Elbow Rd., Map 049, Parcel 0148.
	.46 Acres Elbow Rd., Map 049, Parcel 0148.
Smith, Lonnie and Eunice L.	.08 Acres, Pt. 3 Rosalie Brooks Plat, Map 036, Parcel 0109-A.
Smith, M.A. (Annie M.O. Harrison)	.81 Acres, Armstrong Property, Map 038, Parcel 0126.
Smith, Dorsie G. & Mary Anne	4.005 Acres, Armstrong Property, Map 038, Parcel 0127.

Name	Properties
Spencer, Jimmy and Bernice L.	1.4 Acres, 5 Linkorey Plat, Map 048, Parcel 0102-A.
Stokes, Chester S.	5.87 Acres, Mill Dam, Map 027, Parcel 0012.
Tebault, R. L. and Margaret	66.5 Acres, Elbow Rd., Map 039, Parcel 0030.
Thrasher, D. L. and Caroline C.	8.8 Acres, Elbow, Map 038, Parcel 0050-B
Thrasher, Emma P. and D.L. Thrasher, Estate	403.94 Acres, Elbow, Map 038, Parcel 0050.
	15 Acres, Elbow, Map 038, Parcel 0051.
	74.6 Acres, Turnpike Rd., Elbow, Map 038, Parcel 0078.
Torbert, Viola Davis	18.44 Acres, Elbow, Map 049, Parcel 0150.
Vance, Clement B. Estate (Florence V. Parker, Ex.)	49 Acres, Elbow, Map 049, Parcel 0134.
Vanluik, John W. and Edna	52.5 Acres, Elbow Rd., Map 037, Parcel 0038.
	.68 Acre, #1/2 Tr. 13, Linkorey Realty, Map 048, Parcel 0091.
Voliva, E. R. and Flossie M.	Lot 23, Block 67, N.Hglds.Sub.1, Map 020-A-01, Parcel 067-0023.
	Lot 5,6,8,13 Block 65 N.Hglds.1, Map 020-A-01, Parcel 650005.
	24 Blk. 67, N.Hglds. Sub.1, Map 020-A-01, Parcel 067-0024.
	25 Blk. 67, N.Hglds. Sub.1, Map 020-A-01, Parcel 067-0025.
	22 Blk. 67, N.Hglds. Sub. 1, Map 020-A-01, Parcel 067-0022.
	25, 26 and Pt. 27, Blk. 22, N.Hglds, Sub.1, Map 020-A01, Parcel 022-0025.
	21 Blk 67, N.Hglds., Sub. 1 Map 020-A-01, Parcel 67-0021.

Name	Properties
Voliva, Flossie M. (continued)	20 Blk 67, N.Hglds., Sub 1, Map 020-A-01, Parcel 67-0020.
	2 Blk 66 N.Hghlds.,Sub.1,Map 020-A-01, Parcel 66-00002
	9 Blk. 65,N.Hglds, Sub.1,Map 020-A-01, Parcel 66-0009.
	3 and pt. 2 Block 22, N. Highlands Sub.1, Map 020-A-01, Parcel 022-0003.
	7 Blk 65 N. Highlands, Sub.1, Map 020-A01, Parcel 69-0007.
	Pt. 5, Block 22, N. Hglds.,Sub 1, Map 020-A-01, Parcel 022-0005.
	6 Blk. 66 N. Highlds.,Sub 1, Map 020-A-01, Parcel 066-0006
Ward, Algie B.	18.6 Acres, Gt. Bridge Blvd. Map 036, Parcel 0142.
	66.56 Acres, Gt. Bridge Blvd. Map 036, Parcel 0127.
Wells, Perry L. and Ruth K.	1.42 Acres, Elbow, Map 038, Parcel 0048-B
Widmer, Doris Ann	1 Acre, Gt. Bridge Blvd., Map 036, Parcel 0122.
Whealton, Leslie C., Jr.	9.31 Acres, Pat 5 C.C.Upton Tr. Map 036, Parcel 0189.
Williams, William S. and Lillie	1.5 Acres, Gt. Bridge Rd., Map 036, Parcel 0167.
Wirt, Robert C. and Corinne A.	4.65 Acres, 9 Linkorey Realty Corp., Map 048, Parcel 0097.

FOURTH:— In 1964, the City of Chesapeake enacted Code Section 10—44, providing as follows:

> "There shall be an annual assessment of real estate for local taxation in the city, which shall be made as provided in this article."

Pursuant to the law made and provided, the City of Chesapeake proceeded to assess all properties within the

jurisdiction of the City of Chesapeake and upon completion of said assessment did uniformly tax real property throughout said city on the basis of said assessment in or about the year 1967.

FIFTH:— Since 1967 there has been no annual uniform assessment of real estate, but on the contrary the City has adopted a piecemeal segmental assessment methodology that violates the constitution and laws of the State of Virginia, which required all taxes to be uniform upon the same class of subjects within the territorial limits of the authority levying the taxes.

SIXTH:— Commencing in or about 1968, the City of Chesapeake began to break down the City into geographical segments for the purpose of employing the assessment technique of "continuous maintenance" or as the technique is sometimes described "regular maintenance". Contrary to law, this technique was not employed annually on a jurisdictional at large basis, but in the years here involved was applied to the geographical segment in which the appilcant's properties are situated to the exclusion of properties located in the remainder of the City of Chesapeake. Said method of assessment is unconstitutional by reason of being conducted pursuant to a piecemeal segmental assessment methodology. The general description of the geographic segment within which applicants' properties are located and which were subjected to the piecemeal segmental assessment methodology is set forth in Article First hereof.

SEVENTH:— As a result of the aforesaid illegal and unconstitutional assessments applicants taxes on their aforesaid properties were illegally raised.

WHEREFORE, applicants pray that this Court exercise the jurisdiction bestowed upon it by § 58-1145 of the Code of Virginia to grant relief to your applicant taxpayers by

(1) Decreasing that the piecemeal segmental assessment methodology heretofore referred to to be illegal and unconstitutional;

(2) Directing the appropriate officers of the City of Chesapeake, Virginia, to correct the piecemeal segmental assessment methodology;

(3) Directing the proper officers of the City of Chesapeake, Virginia, to refund all such taxes as your applicants have paid in excess of the taxes for the last prior general assessment applied uniformly to the City of Chesapeake at large in or about the year 1967.

/s/ Henry E. Howell, Jr.
HENRY E. HOWELL, JR.,
of Counsel for Applicants Herein.

I hereby certify that I have requested the Sheriff of the City of Chesapeake, Virginia, to serve a copy of the within Application For Relief upon the following: Roberto H. Waldo, Commissioner of the Revenue, City of Chesapeake, Chesapeake, Virginia; Durwood S. Curling, City Manager, City of Chesapeake, Chesapeake, Virginia; William L. Forbes, City Attorney, City of Chesapeake, Chesapeake, Virginia.

/s/ Henry E. Howell, Jr.
HENRY E. HOWELL, JR.

VIRGINIA:

IN THE CIRCUIT COURT
OF THE CITY OF CHESAPEAKE

In Chancery No. 5459

JAMES A. and R. D. CAPEHART, *et al.*,
Applicants,

v.

CITY OF CHESAPEAKE, VIRGINIA,
Defendant.

DEMURRER

The defendant City of Chesapeake, Virginia, by counsel, says that the Application for Relief is not sufficient in law for the following reasons:

(1) In the event this Court should find, in a proper proceeding for that purpose, that the defendant has employed prior to November 26, 1973, a "piecemeal segmental assessment methodology", as alleged in paragraph SIXTH of the Application for Relief, this finding would not afford any basis for refunds of taxes assessed for 1972 or 1973. In *Perkins* v. *County of Albemarle*, 214 Va. 416 (November 26, 1973), in which the Supreme Court of Virginia held that such assessment methodology violates the uniformity mandate of the Virginia Constitution and upon which the Application for Relief is based, the Court specifically ruled that "As to cities and counties not parties defendant [to that proceeding], our holding has application prospectively only; hereafter, no city or county may employ the implementation methodology we have declared unconstitutional." 214 Va. 416, 418.

(2) The relief sought in paragraphs (1) and (2) of the prayer of the Application for Relief—to-wit, a decree that the alleged "piecemeal segmental assessment methodology is illegal and unconstitutional and an order directing the defendant to correct such methodology—is not authorized or permitted in a proceeding under Section 58-1145 og the Code of Virginia. Section 58-1145 is limited to the correction of an erroneous assessment on the specific property involved.

WHEREFORE, the defendant respectfully prays:

(1) The Application for Relief should be dismissed as failing to state a cause of action.

(2) In the event the Application for Relief is not dismissed, paragraphs (1) and (2) of the prayer be stricken as failing to state grounds for relief that can properly be granted in this proceeding.

CITY OF CHESAPEAKE, VIRGINIA

By _____
Of Counsel

(Certificate of Service Omitted in Printing)

SIXTH JUDICIAL CIRCUIT OF VIRGINIA
Hopewell, Virginia
33860

October 2, 1974

Harry Frazier, III, Esq.
Hunton Williams, Gay & Gibson
Attorneys at Law
700 E. Main Street
Richmond, Virginia 23219

Honorable Henry B. Howell, Jr.
Howell, Amituso, Daugherty & Brown
Attorneys at Law
Suite 603 Maritime Tower
Norfolk, Virginia 23510

Re: Application of Land Owners Etc.—No. 5459
Circuit Court, City of Chesapeake

Gentlemen:

The Court is of the opinion that this case is controlled by Perkins v. Albemarle, 214 Va. 416. The Court will, therefore, sustain the demurrer and dismiss the cause of action. Counsel for the City will prepare an order to this effect, submitted same to counsel for the applicants for endorsement.

It therefore appears that the date of October 21 will be used and is hereby released.

Very truly yours,

/s/ LIGON L. JONES
Ligon L. Jones

LLJ:cpm

cc: William L. Forbes, Esq., City Attorney
Julian R. Raper, Clerk of the Circuit Court

VIRGINIA:

IN THE CIRCUIT COURT
OF THE CITY OF CHESAPEAKE
On the 16th day of October, 1974

No. 5237-Appl.

IN RE: APPLICATION OF LAND OWNERS, ETC.

FINAL ORDER

The Court, upon consideration of the Application of Land Owners filed pursuant to Section 58-1145 of the Code of Virginia of 1950, as amended, the Demurrer of the City of Chesapeake filed in response thereto, Memoranda of Law heretofore submitted and arguments of counsel, is of the opinion that the Application fails to state a cause of action upon which relief can be granted and doth ADJUDGE, ORDER and DECREE that the Demurrer is hereby sustained, the Application is hereby dismissed and the relief prayed for therein is hereby denied, to which action of the Court applicants objected and excepted.

ENTER:

/s/ [Illegible]
Judge

11/16/74

We ask for this:

/s/ William L. Forbes
Counsel for the City of Chesapeake

Seen and objected to:

/s/ William E. Howell
Counsel for Applicants

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 12th *day of* May, 1975.

The petition of James A. Capehart and other owners of real property within the City of Chesapeake, Virginia, for a writ of error to a final order entered by the Circuit Court of the City of Chesapeake on the 16th day of October, 1974, in a certain proceeding then therein depending, entitled, *In Re: Application of land owners to the Circuit Court of the City of Chesapeake for relief from erroneous and unconstitutional assessments, etc.*, having been maturely considered and a transcript of the record of the final order aforesaid seen and inspected, the court being of opinion that there is no reversible error in the final order complained of, doth reject said petition, and refuse said writ of error, the effect of which is to affirm the final order of the said circuit court.

Record No. 750163

A Copy,

Teste:

HOWARD G. TURNER
Clerk

By:/s/
Allen L. Lucy
Deputy Clerk

IN THE SUPREME COURT OF VIRGINIA

No.

HENRY HARPER, *et al.*,
Appellants,

v.

VIRGINIA DEPARTMENT OF TAXATION,
Appellee.

PETITION FOR APPEAL

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Attorneys for Appellants

June 11, 1990

IN THE SUPREME COURT OF VIRGINIA

(Title Omitted in Printing)

ASSIGNMENTS OF ERROR

1. The court below erred in eschewing the plain language of Virginia's statutory tax refund provisions when it concluded that it could deny federal retirees refunds of unconstitutional taxes by accepting the fiction that the taxes were constitutional when exacted.

2. The court below erred in concluding that it needed to analyze retroactive versus prospective-only application of *Davis* v. *Michigan*, 109 S.Ct. 1500 (1989) (declaring Michigan's discriminatory taxation of federal retirees unconstitutional), and it further erred in its application of that analysis to conclude that *Davis* v. *Michigan* should be applied prospectively only.

3. The court below erred in concluding that refunds to federal retirees of income taxes for the 1988 tax year, which were not assessed until *after Davis* v. *Michigan* was issued, could nonetheless be withheld on the basis of prospective-only application of that decision.